

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the investigation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately \$300 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 percent to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 percent to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of September 1, 2019, the effective date of the \$300 billion action, and will extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimbball, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), and 85 FR 13970 (March 10, 2020).

In a notice published August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately \$300 billion. 84 FR 43304 (August 20, 2019) (the August 20 notice). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A and Annex C of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by the List 1 of the \$300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the \$300 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the \$300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative would periodically announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The Office of the United States Trade Representative regularly updates the status of each pending request on the USTR Exclusions Portal at <https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017>.

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the October 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative’s determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 19 specially prepared product descriptions, which cover 39 separate exclusion requests.

In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

As stated in the October 24 notice, the exclusions will apply from September 1, 2019, the effective date of the \$300 billion action, and will extend for one year to September 1, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative

ANNEX

- A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. by inserting the following new heading 9903.88.42 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	

“9903.88.42	Articles the product of China, as provided for in U.S. note 20(uu) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading”		
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2. by inserting the following new U.S. note 20(uu) to subchapter III of chapter 99 in numerical sequence:

“(uu) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

- 1) Bowls of molded plastics, with clips for retaining guide wires during surgical procedures (described in statistical reporting number 3926.90.9990)
- 2) Disposable graduated medicine dispensing cups of plastics (described in statistical reporting number 3926.90.9990)
- 3) Pads of foam plastics, with hook and loop fastener straps, integrated arm protectors, and accessory headrest, body straps, lift sheets, hand grips and face masks, of a kind used for positioning patients during medical procedures (described in statistical reporting number 3926.90.9990)
- 4) Single-use sterile drapes and covers of plastics, of a kind used to protect the sterile field in surgical operating rooms (described in statistical reporting number 3926.90.9990)
- 5) Sterile decanters of polystyrene plastics, each of a kind used to transfer aseptic fluids or medication to and from sterile bags, vials or glass containers (described in statistical reporting number 3926.90.9990)
- 6) Cold packs consisting of a single-use, instant, endothermic chemical reaction cold pack combined with a textile exterior lining (described in statistical reporting number 6307.90.9889)
- 7) Disposable shoe and boot covers of man-made fiber fabrics (described in statistical reporting number 6307.90.9889)
- 8) Eye compresses, each consisting of a fabric cover filled with silica or gel beads, with or without a hook-and-loop fastener strap (described in statistical reporting number 6307.90.9889)
- 9) Face masks, single-use, of textile fabrics (described in statistical reporting number 6307.90.9889)

- 10) Gel pads of textile materials, each with removable fabric sleeves, in the shape of hearts, circles or quadrants (described in statistical reporting number 6307.90.9889)
 - 11) Hot packs of textile material, single-use (exothermic chemical reaction) (described in statistical reporting number 6307.90.9889)
 - 12) Laparotomy sponges of cotton (described in statistical reporting number 6307.90.9889)
 - 13) Patient restraint or safety straps of textile materials, with hook-and-loop or ladder lock fasteners (described in statistical reporting number 6307.90.9889)
 - 14) Single-use blood pressure cuff sleeves of textile materials (described in statistical reporting number 6307.90.9889)
 - 15) Single-use medical masks of textile material (described in statistical reporting number 6307.90.9889)
 - 16) Single-use stethoscope covers (described in statistical reporting number 6307.90.9889)
 - 17) Woven gauze sponges of cotton in square or rectangular sizes (described in statistical reporting number 6307.90.9889)
 - 18) Electromechanical shoe cover dispenser, of steel (described in statistical reporting number 8479.89.6500)
 - 19) Protective articles (described in statistical reporting number 9004.90.0000)”
3. by amending the last sentence of the first paragraph of U.S. note 20(r) to insert “, except as provided in heading 9903.88.42 and U.S. note 20(uu) to subchapter III of chapter 99” after “heading 9903.88.15”.
 4. by amending the article description of heading 9903.88.15 by deleting the word “Articles” and inserting “Except as provided in heading 9903.88.42, articles” in lieu thereof.